IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

WP(C).No. 976 of 2005(N)

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PETITIONERS:

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1. VASANTHA.S., SADALAYAM,
   KUZHIVILAKONAM, KOTHIKAL-PO,
   BALARAMAPURAM, THIRUVANANTHAPURAM.

2. MADHUSOODANAN NAIR.V.,
   CHARUVILA VEEDU, KANJIRAMPARA,
   VAMANAPURAM, THIRUVANANTHAPURAM.

3. SREEKALA CHANDRA.S.,
   SAJEESH BHAVAM, VALLAVILA,
   KOTHIKAL-PO, BALARAMAPURAM,
   THIRUVANANTHAPURAM.

4. ANILKUMAR.P.,
   THUNDIVILAKATH VEEDU, THEKKUMBHAGAM,
   KAZHAKOOTTAM P.O., THIRUVANANTHAPURAM.

5. SREEKUMARI.S.D.,
   AKARATHUM VEEDU, KUTTICHAL P.O.,
   THIRUVANANTHAPURAM.

6. VIJAYARAJ.G.,
   MUZHAKKOLKUNNU, THEKKARIKU PUTHEN VEEDU,
   KANJIRAMKULAM-PO, THIRUVANANTHAPURAM.

7. RADHAKRISHNAN NAIR.K.,
   PANAYARATHALA VEEDU, PANAYARAKUNNU,
   KATTACHALKUZHI P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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1. THE THIRUVANANTHAPURAM DISTRICT
   CO-OPERATIVE BANK LTD., REPRESENTED BY
   ITS GENERAL MANAGER, THIRUVANANTHAPURAM.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

3. KERALA PUBLIC SERVICE COMMISSION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM.

ADDL.4. K.MAHESWARI, PEON UDIYANKULANGARA BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

5. A.MAHESWARI AMMA, PEON, VEMBAYAM BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THRIVUVANANTHAPURAM.

6. SURESHKUMAR, PEON, KAZHAKOOTTAM BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

7. S.SALINA, PEON, VELLANAD BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

8. J.DILEEPKUMAR, PEON, NEYYATTINKARA MORNING AND EVENING BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

9. B.THANKAM, PEON, VANCHIYOOR MORNING AND EVENING BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM

10.K.VIJAYAKUMARI, PEON, NEYYATTINKARA MORNING AND EVENING BRANCH, TRIVANDRUM DISTRICT C0-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

11. K.SREEDEVI, PEON, ARIVIPURAM BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

12. S.SOBHANA, PEON, HEAD OFFICE, TRIVANDRUM DISTRICT CO-OPERAATIVE BANK LTD., THIRUVANANTHAPURAM

13. P.R.SOOSANNA, PEON, PALODE BRANCH, TRIVANDRUM DISTRICT C0- OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

14. N.PRASANNAKUMARI, PEON, MANIKAYAVILAKAM BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM.

15. J.JALAJAKUMARI, PEON, PALAYAM BRANCH, TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTDL, THIRUVANANTHAPURAM

16. D.SHEELAKUMARI, PEON, KULATHOOR BRANCH,
TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD.,
THIRUVANANTHAPURAM

17. S. RADHAMMA, PEON,PUTHENCHANTHAI MORNING AND
EVENING BRANCH, TRIVANDRUM DISTRICT CO-
OPERATIAVE BANK LTD., THIRUVANANTHAPURAM

18. S.SUSEELA, PEON, KAVALAYOOR BRANCH, TRIVANDRUM
DISTRICT CO-OPERATIVE BANK LTD.,
THIRUVANANTHAPURAM

ADDL. RESPODNENTS 4 TO 18 ARE IMPLEADED AS PER ORDER DATED 6-4-2006 IN I.A.NO.5316/2006

BY ADV. SRI.T.R.RAMACHANDRAN NAIR FOR R1
SRI.P.N.SANTHOSH SRI.G.P. FOR R2
SRI.THOMAS ABRAHAM FOR R4, R5, R7 TO R11 & R14 TO R18
SRI.K.B.ARUNKUMAR
SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR
SRI.S.M.PREM
SMT.K.P.SANTHI
SRI.P.C.SASIDHARAN FOR R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/10/2006, ALONG WITH WPC NO. 3345 OF 2006 THE COURT ON 24/11/2006 DELIVERED THE FOLLOWING:

# APPENDIX

PETITIONER'S EXHIBITS:-

P1: True copy of the feeder category rules.

P2: True copy of the resolution No. 25 dated 9-2-2001

P3: True copy of the order No.CB (3) 24036/02/D.Dis. Dated 7-4-2003

P4: True copy of the request given by the bank No.Adm/Estt/E1/2003-04/1891 dated 10-3-2004

P5: True copy of the communication No.866/S.K.K./04 dated 12-4-2004

P6: True copy of the request given by the bank No.Adm/Estt/2004-05 dated 24-8-2004

P7: True copy of the order in W.P.(C) No.28460/2004 dated 8-10-2004

P8: True copy of the order in W.P.(C) No.27738/2004 dated 15-11-2004

P9: True copy of the letter No.Adm/Estt/E1/2004-05 dated 9-12-2004 and resolutionNo.11 dated 8-12-2004

P10: True copy of the order No.CN(3) 44757/2004/D.Dis. Dated 30-11-2004

P11: Photocopy of the list of base minimum vacancies of peon post of Trivandrum DCB

P12: Photocopy of the list of peons /watchmen/expired/retired/promoted since 1995.

RESPONDENTS' EXHIBITS:-

R1(a): True copy of the order in W.P.(C) 28772/2003 dated 12-12-2003

R1(b): True copy of the order in W.P.(C) Nos.28808 and 29555 of 2003dated 12-12-2003

R1(c): True copy of the order No.CB(3)44757/2004/D.Dis. Dated 30-11-2004.

R1(d): True copy of the order No.CB(3)50664/2004 dated 31-3-2005

R1(e): True copy of the order No.CB(3) 50664/2004/D.Dis. Dated 23-5-2005

R1(f): True copy of the chart showing the details of appointment/promotion of peons.

R1(g): True copy of the order No.CB(3) 48793/99 dated 20-12-2000

**K. Thankappan, J.**

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**W.P.(C). Nos. 976/2005 & 3345/2006**

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**JUDGMENT**

Petitioners in these two writ petitions have applied for the post of Peon-cum-Watchman in the Thiruvananthapuram District Co-operative Bank, hereinafter referred to as the 'bank'. Their names are included in the rank list published by the Kerala Public Service Commission. The petitioners submit that even though number of vacancies in the post of Peon/Watchman are available, the respondent bank is making appointments to the above post by promoting part-time employees. It is also submitted that in order to circumvent the legitimate claim of the petitioners for appointment to the post of Peon/Watchman, several appointments have been made by the respondent bank to the post of Watchman by re-designating the same as Security-Watchman. Hence, the petitioners have approached this Court for a direction to the respondent bank to fill up the vacancies of Peon/Watchman by appointing them on the basis of the rank list prepared by the Public Service Commission.

2. When the writ petition came up for hearing on 26-6-2006, this Court passed the following orders:-

i. "The Thiruvananthapuram District Co-operative Bank Ltd. (the 1st respondent in both the writ petitions) is directed to

report to the P.S.C. In the prescribed format, 27 vacancies for appointment as peon-cum-watchman from the P.S.C. List forthwith, i.e., at any rate, on or before 29-6-2006. The P.S.C. will advice memos to these candidates only on getting further orders from this Court. The above direction shall not be understood as a reflection by this Court on the merits of the contentions of the impleaded respondents in W.P.(C) No.976 of 2005 and the respondents sought to be impleaded in W.P.(C) No.3345 of 2006.

ii. The 1st respondent-bank shall not engage security staff for performing the duties of peons during the currency of the P.S.C. List and if it becomes necessary to engage anybody temporarily for discharging the duties of peons, temporary appointments shall be made from the P.S.C. list."

3. Heard learned counsel for the petitioners, the respondent bank, Government Pleader, counsel for the Kerala Public Service Commission and counsel for Addl. respondents

4. Sri George Poonthottam and Sri. N. Nandakumara Menon, learned counsel for the petitioners, submit that as per the interim order passed by this Court, 27 vacancies have been reported to the Kerala Public Service Commission on 28-6-2006 and hence the petitioners are entitled for appointment.

5. In the counter affidavit filed by the respondent bank it is stated at present the total branches were 58, the total sanctioned posts were 51 and the total vacancies filled up were 64, out of which 14 were from PSC hands.

It is also stated that the question regarding the promotion of part-time sweepers was considered by this Court in W.P.(C)Nos.28808, 29555 and 28772 of 2003 and in the judgments therein the promotees were directed to be reverted so as to accommodate the P.S.C. hands in the 10 vacancies reported to the P.S.C. This Court also directed that as and when vacancies arise in future, the promotees should be preferred for appointment according to their seniority. It is further stated that pursuant to the interim order passed by this Court, out of 30, 4 vacancies had been already advised. The further case of the respondent bank is that part-time contingent employees had been included in Appendix II to rule 188 as per SRO 1074 of 2003 and thus part-time sweepers were eligible for promotion to the post of Peons.

6. It is the further case of the respondent bank that as per the sanctioned order dated 31-11-2004 passed by the Registrar of Co-operative Societies, 5 more branches are allowed to be opened. Hence, as per the above order, the posts of Peon has been fixed as 61 and the posts of watchman has been fixed as 4. It is the further case of the 1st respondent that on the basis of the interim orders passed by this Court, 4 vacancies have been reported for advice to the Kerala Public Service Commission. Subsequently, by resolution dated 8-12-2004 56 posts have been sought for

sanction additionally, out of which 10 vacancies are peons. Pursuant to the above resolution, the Registrar had passed two orders dated 31-3-2005 and 23-5-2005, by which the the Registrar directed that the appointment of the newly sanctioned posts should be made by the direct recruitment through Kerala Public Service Commission/promotion in accordance with the Kerala Co-operative Societies Act, 1969 and Feeder Category Rules. It is stated that at present the number of sanctioned posts were 51 and the total vacancies had to be filled up 64. Out of the above vacancies, 14 were filled up from the candidates advised by the Kerala Public Service Commission. Hence, the contention of the petitioners that there are 61 unfilled vacancies was not correct. That apart out of the total sanctioned posts of 65, 9 posts were filled up by promoting part-time sweepers as per the resolution dated 7-10-2005. Learned counsel for the respondent bank submits that at present there remains no vacancies as unfilled to appoint the petitioners.

7. Learned counsel appearing for the additional respondents 4 to 18 in W.P.(C) No.976/2005 submits that the additional respondents were appointed by the respondent bank as contingent employees. Since the contingent employees have been included in Appendix-III to Rule 188 of the Kerala Co-operative Societies Rules, 1969, these respondents are eligible for promotion to the post of Peons and as per resolutions passed by the

respondent bank dated 23-9-2004 and 7-10-2005, these respondents have been promoted as Peon-cum-Watchman and they are presently working in the promoted posts in various branches. The learned counsel further submits that the contention of the petitioners that there are more vacancies to be filled up from the list of the Kerala Public Service Commission is not correct. As per the Feeder Category Rules framed by the respondent bank, respondents 4 to 18 are entitled to be promoted to the post of Peons/Watchman. The Feeder Category Rules now framed by the respondent bank is placed before the the Registrar of Co-operative Societies for getting sanction as per the provisions of the Act and the Rules. Hence, the promotion given to the respondents 4 to 18 is correct and they may not be disturbed by this Court.

8. Question to be decided in these writ petitions is whether the petitioners are entitled for appointment to the post of Peon-cum-Watchman on the basis of the vacancies reported as per the direction issued by this Court?

9. It is to be noted that the names of the petitioners are included in the rank list prepared by the Public Service Commission and during the currency of the list, as per the interim order issued by this Court, 13 more vacancies were reported. As per the counter affidavit filed by the respondent

bank, it is seen that pursuant to the interim order of this Court, out of the reported vacancies, 4 vacancies had been advised. It is an admitted fact that part-time sweepers had been promoted as Peon-cum-Watchman and they are working in the promoted post. The contention of the petitioners is that the part-time contingent employees who are included in Appendix III to Rule 188 of the Kerala Co-operative Societies Rules will not confer any legal right for promotion to the post of Peon-cum-Watchman. The further contention of the petitioners is that even now the security guards who had been appointed by the respondent bank are still working in the post of Peon-cum-Watchman. The Registrar directed that the appointment of newly sanctioned posts should be made by direct recruitment through the Kerala Public Service Commission or promotion in accordance with the Act. It is made clear that the Feeder Category Rules framed by the respondent bank is under consideration of the Registrar.

10. In the above circumstances, the contention of the petitioners that they are entitled for appointment on the basis of the vacancies reported as per the interim order passed by this Court is justifiable. Hence, it is only proper for the respondent bank to take a decision to fill up the reported vacancies in the post of Peon-cum-Watchman by creating supernumerary posts of Peon-cum-Watchman or by reverting the promotees who were

promoted from the category of part-time employees or from the category of Security-Watchman. There will be a direction to the Kerala Public Service Commission to advice candidates to the 27 reported vacancies as per the interim order passed by this Court as early as possible, at any rate within sixty days from the date of receipt of copy of this judgment.

The writ petitions are disposed of as above.

**24th November,2006** **K.Thankappan,**
**Judge.**

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**K. Thankappan,J.**

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**W.P.(C) No. /2006**

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**Judgment**

**19-10-2006**